

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MCKRAE ROBERT-LEE
SHAYKIN, XYZINA SHAYKIN, JASON
DOUGLAS-DALE POWERS, JR., and HADYN
DENVER-SCOTT POWERS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRENDA SHAYKIN,

Respondent-Appellant.

UNPUBLISHED
May 8, 2008

No. 281788
Lenawee Circuit Court
Family Division
LC No. 06-000165-NA

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

MEMORANDUM.

Respondent appeals by right from a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent and her husband subjected the older children to domestic violence and physical abuse. Respondent failed to protect the children from her husband, allowing him back into the home in violation of court orders. Respondent made little effort to comply with the service plan and then committed a crime and was incarcerated. At the time of the hearing, she lacked both housing for the children and a sufficient income with which to support them. Further, the evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests. *Id.*; MCL 712A.19b(5).

We also reject respondent's argument that trial counsel was ineffective. We apply by analogy the principles of effective assistance of counsel developed in the context of the constitutional right to counsel in a criminal prosecution. See *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). Because respondent did not raise this issue below, our review is limited to errors apparent from the record. *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). Although respondent asserts that counsel should have called additional witnesses and presented additional evidence, the record does not disclose what testimony any additional witnesses would have provided, or that any additional evidence would have been beneficial to

respondent. Thus, there is no basis for concluding that counsel's performance was deficient, or that respondent was prejudiced by counsel's failure to call additional witnesses or present additional evidence. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999).

Respondent also argues that the trial court erred by failing to conduct separate termination hearings for her and respondent Mark Shaykin. Because respondent did not request a separate hearing in the trial court, this unpreserved issue is reviewed for plain error affecting respondent's substantial rights. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006). Although respondent asserts that her interests conflicted with those of Mark Shaykin, the court was capable of adjudicating the rights of each parent separately, and properly could terminate the parental rights of one parent without terminating the rights of the other, if appropriate. *In re Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993). A separate hearing was not required to avoid prejudice to respondent's case. See *Detloff v Taubman Co, Inc*, 112 Mich App 308, 310-311; 315 NW2d 582 (1982). Thus, there was no plain error.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey